

ATTACHMENT 1

Insurance Commissioner
ACCEPTED SOP

MAR - 5 2018

TIME: 2pm

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

PROVIDENCE HEALTH AND SERVICES,
a Washington non-profit corporation; and
SWEDISH HEALTH SERVICES, a
Washington non-profit corporation,

Plaintiffs,

v.

CERTAIN UNDERWRITERS AT LLOYD'S
LONDON, SYNDICATE 2623/623
(BEAZLEY); and FEDERAL INSURANCE
COMPANY,

Defendants.

NO.

COMPLAINT

Plaintiffs, Providence Health and Services and Swedish Health Services (collectively,
"Providence"), allege as follows:

I. INTRODUCTION

1.1 This is an action for declaratory judgment and breach of contract, seeking:

(a) A declaration of the rights, duties, and liabilities of the parties under
primary and excess insurance policies issued to Providence by Defendants with respect to
liabilities incurred by Providence in connection with an employment arbitration;

COMPLAINT - 1

GORDON	1001 Fourth Avenue
TILDEN	Suite 4000
THOMAS	Seattle, WA 98154-1007
CORDELL	206.467.6477

(b) Damages for breach of contract caused to Plaintiffs by Defendant Certain Underwriters at Lloyd's London, Syndicate 2623/623; and

(c) Attorneys' fees and costs incurred by Plaintiffs in this action pursuant to the rule in *Olympic Steamship Co., Inc. v. Centennial Ins. Co.*, 117 Wn.2d 37, 811 P.2d 673 (1991), and its progeny.

II. PARTIES

Plaintiff Providence Health and Services

2.1 Providence Health and Services is a non-profit corporation organized under the laws of the State of Washington, with its principal place of business in Renton, Washington.

Plaintiff Swedish Health Services

2.2 Swedish Health Services is a non-profit corporation organized under the laws of the State of Washington, with its principal place of business in Seattle, Washington.

Defendant Certain Underwriters at Lloyd's London, Syndicate 2623/623 ("Beazley")

2.3 Certain Underwriters at Lloyd's London, Syndicate 2623/623 ("Beazley"), are foreign and/or domestic underwriters whose exact identities are currently unknown.

2.4 Beazley is, and at all relevant times to this Complaint was, doing business in the State of Washington.

Defendant Federal Insurance Company

2.5 Federal Insurance Company ("Federal") is incorporated in the State of Indiana and has its principal place of business Warren, New Jersey.

2.6 Federal is, and at all relevant times to this Complaint was, an authorized insurer doing business in Washington.

III. JURISDICTION AND VENUE

Subject Matter Jurisdiction

3.1 This Court has jurisdiction pursuant to RCW §§ 2.08.010, 7.24.010, and 7.24.020.

Personal Jurisdiction

3.2 Defendants have submitted to the jurisdiction of the courts of the State of Washington by conducting business here; by delivering, or issuing for delivery, insurance policies here; by issuing policies that cover subjects located, resident, or to be performed in this State; and, in the case of Beazley, via an express term in the insurance policy at issue.

3.3 This Court has personal jurisdiction over all the parties.

Venue

3.4 Venue in this Court is proper pursuant to RCW §§ 4.12.025 and 48.05.220.

IV. INSURANCE POLICIES

Beazley's Primary Policy

4.1 Beazley issued a Management Liability Insurance Policy for Healthcare Organizations to Providence, bearing Policy No. W14646150301, effective 11/1/15 to 7/1/22, with a policy limit of \$10,000,000 for each Employment Practices Liability Claim.

Federal's Excess Policy

4.2 Federal issued an Directors and Officers Excess Liability policy to Providence, bearing Policy No. 8221-3385, effective 11/1/15 to 7/1/22, with a limit of \$10,000,000 in excess of Beazley Policy No. W14646150301.

V. UNDERLYING ARBITRATION

Newell's Discrimination Claims and the Arbitration Award

5.1 This insurance coverage suit arises out of an underlying arbitration brought by Dr. David W. Newell against Providence, and the arbitration award and judgment arising therefrom (the "Newell claim"). In August 2015, Newell alleged that he was the subject of age-related discrimination and retaliation. Providence initiated an internal investigation and proposed potential methods of resolving the concerns raised by Newell, which Newell never accepted.

5.2 During the course of the internal investigation, Newell was arrested for soliciting a prostitute during a sting operation conducted by local police. Newell did not report the arrest to Providence as required in his employment contract. Providence later learned of Newell's arrest from the State Medical Quality Assurance Commission. After the investigation, Providence terminated Newell's employment contract for failure to report his arrest to Providence.

5.3 Newell commenced an arbitration pursuant to the terms of his employment contract, seeking damages for the termination of his employment.

5.4 Providence denied that it had acted wrongfully or caused any damage to Newell, and vigorously defended the arbitration proceeding.

5.5 The matter proceeded to arbitration and, on August 18, 2017, the arbitrator entered an award against Providence. The award was based on claims for breach of contract and violation of Washington's Law Against Discrimination ("WLAD").

5.6 The arbitration award included the following damages:

- (a) \$16,500,000 for lost earnings;
- (b) \$1,000,000 for emotional distress; and

(c) An award of reasonable attorneys' fees recoverable under the WLAD claim.

The Judgment and Pending Appeal

5.7 On October 27, 2017, King County Superior Court entered a Judgment on Arbitration Award ("Judgment"), which included the above damages and \$685,178.84 in attorneys' fees and costs.

5.8 Providence appealed the arbitrator's award and the Judgment to the Washington Court of Appeals, Division I. The appeal is pending.

VI. THE INSURERS' COVERAGE POSITIONS

Beazley's Denial of Coverage

6.1 Providence notified Beazley of the Newell claim on August 28, 2017. Beazley denied coverage via letter dated February 23, 2018.

Federal Was Notified of the Claim, But Has Not Taken a Substantive Coverage Position

6.2 Providence notified Federal of the Newell claim on August 28, 2017. By letter dated September 22, 2017, Federal acknowledged the claim and indicated it had no obligation to pay because the \$10 million underlying policy limit had not been paid. To date, Federal has not rendered a substantive coverage determination.

VII. FIRST CLAIM: DECLARATORY JUDGMENT

8.1 The Newell claim satisfies the insuring agreement of the Beazley policy and the Federal policy, no exclusion from coverage applies, and all conditions under the policies have been satisfied or discharged and excused.

8.2 An actual controversy and justiciable controversy exists as to whether the Newell Claim is covered by the Beazley and Federal policies.

8.3 The issuance of declaratory relief by this Court will terminate the existing controversy between the parties.

8.4 Providence seeks a declaratory judgment of all rights and obligations under the policies with respect to the Newell claim.

VIII. SECOND CLAIM: BREACH OF CONTRACT (BEAZLEY ONLY)

9.1 Providence realleges the allegations of Paragraphs 1.1 through 8.4, as if fully set forth herein.

9.2 Defendant Beazley's denial of coverage for the Newell claim is in breach of contract.

9.3 Providence has incurred and will continue to incur damages because of Beazley's breach of the Policy, including attorneys' fees and costs associated with bringing this action.

IX. PRAYER FOR RELIEF

Plaintiffs request the following relief:

1. A declaratory judgment that Defendants are obligated to afford coverage for the Newell claim.

2. For money damages against Beazley for breach of contract, in an amount to be proved at trial, together with pre-judgment and post-judgment interest.

3. For reasonable attorneys' fees and costs pursuant to *Olympic Steamship Co. v. Centennial Ins. Co.*, 117 Wn.2d 37, 811 P.2d 673 (1991).

4. For such other and further relief as the Court deems just, proper, and equitable.

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1 DATED this 1st day of March, 2018.
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4 **GORDON TILDEN THOMAS & CORDELL LLP**
5 Attorneys for Plaintiffs Providence Health and Services
6 and Swedish Health Services
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8 By s/ Franklin D. Cordell

9 Franklin D. Cordell, WSBA #26392

10 Brendan Winslow-Nason, WSBA #39328

11 Chelsey L. Mam, WSBA #44609

12 1001 Fourth Avenue, Suite 4000

13 Seattle, Washington 98154-1007

14 206.467.6477

15 fcordell@gordontilden.com

16 bwinslow-nason@gordontilden.com

17 cmam@gordontilden.com
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DEMAND FOR JURY

Pursuant to CR 38 and LR 38, Plaintiffs Providence Health and Services and Swedish
Health Services hereby request a jury of 12 persons for the trial of this matter.

The proper fee for this demand, the sum of \$250, has been paid simultaneously with this
filing.

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DEMAND FOR JURY - 1

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